

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

SEAN JEFFREY RICHSON,	)	Case No.: 1:20-cv-01502-DAD-JLT (HC)
	)	
Petitioner,	)	FINDINGS AND RECOMMENDATION TO
	)	DISMISS PETITION WITHOUT PREJUDICE
v.	)	
	)	
K. CLARK, Warden,	)	[10-DAY OBJECTION DEADLINE]
	)	
Respondent.	)	
	)	
	)	

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On October 20, 2020, Petitioner filed a petition for writ of habeas corpus in the United States District Court for the Central District of California. (Doc. 1.) The Central District transferred the case to this Court on October 23, 2020. (Doc. 3.) Petitioner filed a first amended petition on December 9, 2020 (Doc. 9) and filed a second amended petition on March 1, 2021 (Doc. 13). The Respondent filed a motion to dismiss the action as untimely and for failure to state a cognizable federal claim. (Doc. 19.) On June 10, 2021, the Court issued findings and recommendations to grant the motion to dismiss. (Doc. 22.)

On June 11, 2021, Petitioner filed a motion to withdraw the petition. (Doc. 23.) Accordingly, the Court will construe Petitioner's motion as a request for voluntary dismissal. Respondent has not yet filed an answer to the petition.

Pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, "the [petitioner] may dismiss an action without a court order by filing: a notice of dismissal before the opposing party serves

either an answer or a motion for summary judgment . . . .” Pursuant to Rule 12 of the Rules Governing Section 2254 Cases, “[t]he Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules.” Therefore, under Rule 41(a)(1), the petition must be dismissed without prejudice. The Court expresses no opinion with respect to the timeliness of the instant petition or any future petition. Nevertheless, Petitioner is advised that there is a one-year statute of limitations period governing the filing of federal habeas petitions which commences upon the conclusion of direct review. 28 U.S.C. § 2244(d). The statute may be tolled while Petitioner seeks relief in the state courts, see 28 U.S.C. § 2244(d)(2), but it is not tolled for the time a habeas petition is pending in federal court. Duncan v. Walker, 533 U.S. 167, 181-82 (2001).

### RECOMMENDATION

For the foregoing reasons, the Court RECOMMENDS that the petition be dismissed without prejudice.

This Findings and Recommendation is submitted to the United States District Court Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within ten days after being served with a copy of this Findings and Recommendation, Petitioner may file written objections with the Court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). Petitioner is advised that failure to file objections within the specified time may waive the right to appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: June 16, 2021

/s/ Jennifer L. Thurston  
CHIEF UNITED STATES MAGISTRATE JUDGE